

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

ALEX S. PENATE,)
Petitioner,)
-vs-) Case No. CIV-16-1442-F
RAYMOND BYRD, Warden,)
Respondent.)

ORDER

On December 22, 2016, United States Magistrate Judge Shon T. Erwin issued a Report and Recommendation, recommending that petitioner's application for leave to proceed *in forma pauperis* be denied and that he be ordered to prepay the filing fee of \$5.00. Magistrate Judge Erwin further recommended that this action be dismissed without prejudice to refiling unless petitioner pays the \$5.00 filing fee in full to the clerk of the court within 20 days of any order adopting the Report and Recommendation.

The clerk of the court has received a payment of the \$5.00 filing fee from petitioner. *See*, doc. no. 6. In light of petitioner's payment of the filing fee, the court **ORDERS** as follows:

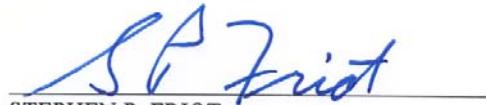
(1) The Report and Recommendation issued by United States Magistrate Judge Shon T. Erwin on December 22, 2016 (doc. no. 5) is **ACCEPTED, ADOPTED** and **AFFIRMED** to the extent it recommends that petitioner's application for leave to proceed *in forma pauperis* be denied.

(2) Petitioner's Application for Leave to Proceed In Forma Pauperis, filed December 16, 2016 (doc. no. 4), is **DENIED**.

(3) The Report and Recommendation issued by United States Magistrate Judge Shon T. Erwin on December 22, 2016 (doc. no. 5) is **DECLARED MOOT** to the extent it recommends that this action be dismissed without prejudice unless petitioner pays the \$5.00 filing fee in full to the clerk of the court within 20 days of any order adopting the Report and Recommendation.

(4) This action is re-referred to United States Magistrate Judge Shon T. Erwin for further proceedings in accordance with 28 U.S.C. § 636 and the court's previous referral order of December 19, 2016 (doc. no. 3).

DATED January 12, 2017.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE

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